

## § 1780.95

to be applied in accordance with normal procedures governing extra payments, so that the account does not become delinquent.

(1) *Multiple debt instruments.* The following will be adhered to when preparing debt instruments:

(1) When more than one loan type is used in financing a project, each type of loan will be evidenced by a separate debt instrument or series of debt instruments;

(2) Loans obligated in different fiscal years and those obligated with different terms in the same fiscal year will be evidenced by separate debt instruments;

(3) Loans obligated for the same loan type in the same fiscal year with the same term may be combined in the same debt instrument;

(4) Loans obligated in the same fiscal year with different interest rates that will be closed at the same interest rate may be combined in the same debt instrument.

[62 FR 33478, June 19, 1997, as amended at 64 FR 29947, June 4, 1999]

## § 1780.95 Public bidding on bonds.

Bonds offered for public sale shall be offered in accordance with State law and in such a manner to encourage public bidding. The Agency will not submit a bid at the advertised sale unless required by State law, nor will reference to Agency's rates and terms be included. If no acceptable bid is received, the Agency will negotiate the purchase of the bonds.

## §§ 1780.96–1780.100 [Reserved]

## PART 1781—RESOURCE CONSERVATION AND DEVELOPMENT (RCD) LOANS AND WATERSHED (WS) LOANS AND ADVANCES

Sec.

1781.1 Purpose.

1781.2 Policy.

1781.3 Authorities, responsibilities, and delegation of authority.

1781.4 Definitions.

1781.5 Eligibility.

1781.6 Loan purposes.

1781.7 Loan and advance limitations and obligations incurred before loan closing.

1781.8 Rates and terms—WS loans and WS advances and RCD loans.

## 7 CFR Ch. XVII (1–1–11 Edition)

1781.9 Security, feasibility, evidence of debt, title, insurance, and other requirements.

1781.10 [Reserved]

1781.11 Other considerations.

1781.12 Preapplication and application processing.

1781.13 [Reserved]

1781.14 Planning, options, and appraisals.

1781.15 Planning and performing development.

1781.16 [Reserved]

1781.17 Docket preparation and processing.

1781.18 Feasibility.

1781.19 Approval, closing, and cancellation.

1781.20 Disbursement of WS and RCD loan funds and WS advance funds.

1781.21 Borrower accounting methods, management, reporting, and audits.

1781.22 Subsequent loans.

1781.23 Servicing.

1781.24 State supplements and availability of bulletins, instructions, forms, and memorandums.

1781.25–1781.100 [Reserved]

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

SOURCE: 62 FR 33500, June 19, 1997, unless otherwise noted.

## § 1781.1 Purpose.

This part prescribes the policies and procedures for making:

(a) Watershed (WS) loans and Watershed (WS) advances for works of improvement in a watershed project; and

(b) Resource Conservation and Development (RCD) loans for measures or projects needed to implement the RCD area plan to achieve objectives in an RCD area.

## § 1781.2 Policy.

(a) Rural Utilities Service (RUS), is an agency of the United States Department of Agriculture established pursuant to section 232 of the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 Stat. 3178), successor to the Farmers's Home Administration. Natural Resources Conservation Service (NRCS), is an agency of the United States Department of Agriculture established pursuant to section 232 of the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 Stat. 3178), successor to the Soil Conservation Service. RUS will make WS and RCD loans available to sponsoring local public bodies, agencies, and nonprofit organizations to assist them in obtaining the local cost of WS

## Rural Utilities Service, USDA

## § 1781.4

works of improvement and RCD measures. Any processing or servicing activity conducted pursuant to this part involving authorized assistance to RUS employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of Part 1900 of this title. Applicants for this assistance are required to identify any known relationship or association with an RUS employee. RUS will assist the local sponsors and the NRCS in making loans from NRCS construction funds as WS advances when needed for the development of future water supplies or for site preservation.

(b) Rural Development State and local offices will administer these programs on behalf of RUS and will coordinate application processing with the NRCS and other appropriate State and Federal agencies.

### § 1781.3 Authorities, responsibilities, and delegation of authority.

(a) NRCS provides technical and financial assistance to sponsoring local organizations for developing WS and RCD area plans and for individual RCD measures or projects and watershed works of improvement. The watershed work plan for developing, operating, and maintaining watershed works of improvement must be agreed upon by sponsoring local organizations and NRCS. When approved, it is the basis for extending technical and cost sharing assistance from watershed funds. The RCD area plan is prepared for the development of the RCD area by sponsoring local organizations with assistance from NRCS and other agencies, endorsed by the Governor or by the agency designated by the Governor, and accepted by the Secretary of Agriculture or his delegate. It includes objectives, planned courses of action, and RCD measures or projects to be developed. It is amended as necessary to include continuing activities and needs in the RCD area.

(b) RUS receives and processes applications for WS loans and NRCS WS advances and RCD loans and makes and services such loan and advances. WS loans are made by RUS from either Public Law 534 (78th Cong.) funds authorized in the Flood Control Act of

1944 (33 U.S.C. 701 et seq.) or Public Law 566 (83rd Cong.) funds authorized in the Watershed Protection and Flood Prevention Act of 1954 (68 Stat. 666) to cover a part or all of the local cost for a watershed work of improvement.

(c) WS loans and WS advances may be made to project sponsors in watershed project areas for which:

(1) A watershed work plan has been approved administratively or by resolutions adopted by the Committee on Agriculture and Forestry of the Senate and by the Committee on Agriculture of the House of Representatives; and

(2) Federal assistance has been authorized for the installation of works of improvement by the Administrator of NRCS.

(d) RCD loans may be made in areas authorized for RCD program assistance by the Secretary of Agriculture and for which an RCD plan design or area plan has been accepted by the State NRCS Conservationist.

(e) *Delegation of authority.* The Rural Development State Director is authorized to approve WS and RCD loans subject to limitations in RUS Staff Instruction 1780-1 and conditions of this part. The Rural Development State Director is authorized to relegate authority in accordance with this part to the Chief, Community Programs; or other members of the State Office staff.

(f) NRCS is responsible for providing technical and financial assistance to sponsoring local organizations for planning and developing WS and RCD areas. This includes development of WS and RCD plans and WS works of improvement and RCD measures or projects.

(g) RUS is responsible for making and servicing WS loans and advances and RCD loans.

(h) The NRCS-RUS Agreements in RUS Bulletin's 1781 and 1781-2 include further responsibilities and functions of NRCS and RUS in WS and RCD areas.

### § 1781.4 Definitions.

(a) *Watershed (WS) project.* An authorized area in which watershed assistance from NRCS and other U.S. Department of Agriculture (USDA) agencies including WS loans and advances may be provided. Watershed assistance is provided

in two types of watershed projects identified by the Public Law under which they are authorized.

(1) *Public Law-534 Watershed.* One of the 11 watersheds authorized by Congress in the Flood Control Act of 1944 (33 U.S.C. 701 et seq.), Public Law 78-534 as amended.

(2) *Public Law-566 Watershed.* A small watershed of not more than 250,000 acres authorized in accordance with the Watershed Protection and Flood Prevention Act, August 4, 1954, Public Law 83-566 as amended.

(b) *Resource Conservation and Development (RCD) area.* An area in which RCD program assistance from NRCS and other USDA agencies has been authorized. It usually includes all or part of more than one county and may be coterminous with substate planning and development areas. RCD loans are authorized under Section 32 of Title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011).

(c) *Watershed plan.* A plan agreed upon by sponsoring local organizations and the NRCS for developing, operating, and maintaining watershed works of improvement.

(d) *RC&D measure plan.* A plan document for a land area, directly controlled or under the jurisdiction of the sponsoring public bodies or public non-profit organization. It involves one of the measure purposes eligible for RC&D cost sharing assistance. The document sets forth what will be done, how, when and by whom, and involves RC&D technical and/or financial assistance.

(e) *RCD area plan.* A plan prepared by sponsoring local organizations with assistance from NRCS and other agencies for the development of the RCD area which has been endorsed by the Governor or his designated agency and accepted by the Secretary of Agriculture or his delegate. It includes objectives, planned courses of action, and RCD measures to be developed. It is amended as necessary to include continuing activities and needs in the RCD area.

(f) *Watershed works of improvement.* Structural, nonstructural, and land treatment measures included in a watershed plan which are to be installed in a watershed project.

(g) *RCD measure or project.* An activity or development indicated in the RCD area plan as being needed to achieve RCD area goals and objectives.

(h) *Cost sharing.* The WS and RCD legislative authorities provide for sharing certain costs of installing WS works of improvement or RCD measures by the Federal Government and by sponsoring local organizations. Federal cost sharing from WS and RCD funds is provided by NRCS for certain WS works of improvement and RCD measures. Information on amounts, purposes, and procedures for cost sharing is available from the NRCS.

(i) *Local cost.* The part of the cost of a WS work of improvement or a RCD measure or project that is to be paid by a sponsoring local organization.

(j) *Public agency or public body.* A State agency or department or instrumentality, county, municipality or other political subdivision or instrumentality of a State or agencies or districts created by or pursuant to State law for making improvements of a public nature or providing public services such as soil and water conservation districts, irrigation districts, drainage districts, flood prevention and control districts, school districts, other special purpose districts, municipal corporations or similar governmental units.

(k) *Non-profit corporation.* Mutual and other irrigation, water users, water supply, drainage, or waste disposal companies or associations, ditch companies, grazing, recreation and forestry associations and similar associations and organizations generally designated as private corporations operating on a non-profit basis. They may be organized and chartered under special law, general nonprofit corporation law, or general profit corporation law, if operated on a nonprofit basis under adequate charter, bylaw, mortgage or supplementary agreement provisions which will assure continued operation in that manner.

(l) *Sponsoring local organization.* A local public agency or body or a local nonprofit corporation having authority under State law to plan, develop, maintain and operate WS works of improvement or RCD measures or projects included in a WS or RCD area plan. The

## Rural Utilities Service, USDA

## § 1781.6

name of the sponsoring local organization must be included in the plan and sponsorship must be evidenced by execution of the plan.

(m) *Watershed loan*. A loan made by RUS from watershed funds to a sponsoring local organization to develop a WS work of improvement.

(n) *RCD loan*. A loan made by RUS from RCD funds to a local sponsoring organization to develop a RCD measure or project. RCD loans are made from RCD funds to enable sponsoring local organizations to provide a part or all of the local share of cost for an RCD measure.

(o) *Watershed advance*. A loan made from NRCS watershed construction funds to develop a future water supply or for the preservation of a site for a work of improvement authorized in a watershed plan.

(p) *Future water supply*. Water storage capacity in a reservoir with related facilities for release or withdrawal of water to meet future needs for municipal or industrial use.

(q) *Preservation of sites*. Acquisition to assure their availability for planned developments. Land, easements, or rights-of-way essential to preserve sites for watershed works of improvement or RCD measures.

(r) *Processing office*. Means the office designated by the Rural Development State Director to accept and process applications for WS and RCD loans and advances.

### § 1781.5 Eligibility.

To be eligible for a WS loan, WS advance, or an RCD loan, the sponsoring local organization must meet the following requirements as applicable. Questions on eligibility will be referred to the Regional Attorney, OGC for legal advice prior to development of a loan docket.

(a) Be named in the WS or RCD plan as a sponsor of the development to be financed.

(b) Be legally organized and established in the WS or RCD area with legal authority, responsibility and capability to develop and operate the facility for which assistance is requested.

(c) Have authority under and comply with Federal, State and local laws on such matters as:

(1) Organizing, installing, operating, and maintaining proposed WS works of improvement or RCD measures or projects.

(2) Borrowing money, giving security, levying taxes, making assessments or raising revenues for operation and maintenance of the facility and repayment of loans.

(3) Land use zoning.

(4) Acquiring necessary property, lands, and rights.

(5) Obtaining approval of construction plans and specifications by appropriate Federal, State, and local agencies and construction facilities.

(6) Health and sanitation standards, water pollution control, and environmental regulations.

(7) Design and installation standards.

(8) Public service commission or similar State public body rules and regulations.

(d) Be financially sound and capable of providing service essential to the rural development needs of the area.

(e) If it is a nonprofit corporation.

(1) Membership should be broadly based and representative of the area benefiting from the facility. Membership on the governing board of the corporation will be limited to those living in the area to be benefited unless for justifiable reasons the Rural Development State Director gives prior approval for other than local residents to serve on the board of directors.

(2) The corporation must propose a facility which will primarily serve or generate other substantial, tangible benefits for farmers and other residents of the area. In the case of a recreational development at least two-thirds of the membership must be farmers and other residing in the area.

(3) Nonprofit corporations will not be formed to serve an area which could be served by a public agency which has adequate authority to provide the needed service unless prior approval of the National Office is obtained.

### § 1781.6 Loan purposes.

(a) *WS and RCD loans*. WS and RCD loans may be used for:

(1) Water development, storage, treatment and conveyance to farms for

irrigation and other farm use, including farmstead, livestock, orchard, and crop spraying.

(2) Drainage systems and facilities in farm areas to sustain agricultural production or protect farmers and rural residents from water damage.

(3) Agricultural water management practices for annual streamflow stabilization, recharging ground water reservoirs, and conserving water supplies by management and control of vegetation along waterways and in drainage basins.

(4) Soil conservation and water control facilities such as dikes, terraces, detention reservoirs, stream channels, ditches, and other special land treatment and stabilization measures needed to protect farms and rural residents from water damage, provided such facilities cannot be installed or improved under, or will not conflict with, other public programs such as those administered by the Corps of Engineers.

(5) Special treatment measures or equipment primarily, though not exclusively, for flood prevention such as:

(i) Facilities and equipment for fire prevention and control.

(ii) Tree planting and establishment of other vegetative cover for stabilizing critical runoff and sediment-producing areas.

(iii) Structural and vegetative measures to stabilize stream channels and gullies.

(iv) Basic farm conservation practices to control runoff, erosion, and sedimentation.

(6) Installing, repairing, and improving water storage facilities, including outlets for immediate and future domestic, municipal and industrial water supply and water quality management, and conveying water to treatment facilities or distribution systems. When payment of loans for such facilities are primarily dependent upon revenues from use of water stored the loan approval official must determine the adequacy of facility for use of the water before a loan is closed.

(7) Public water based recreation and fish and wildlife developer loans will only be made to public bodies for the local share of cost for such developments for which NRCS is providing technical or financial assistance from

WS or RCD funds. Loans will not be made for developments larger or more elaborate than that which is included in the WS or RCD plan. Loans may include funds for:

(i) Construction of necessary water resource improvements such as storage capacity in multipurpose and single purpose reservoirs, water level control structures in reservoirs and streams, and stream channel improvements necessary for the development of the facilities. This may include practices for improvement of fish and wildlife habitat and environment and related areas and facilities for proper protection and management of the development.

(ii) Essential developments, improvements, equipment and facilities for access, public health and safety, and efficient operation management and maintenance; such as energy utilities, water supply and waste disposal systems, maintenance buildings, fences, cattle guards, roads and trails, parking, picnicking, camping, beaches, playgrounds, and related shelters and equipment.

(iii) Special areas and structures such as forest and other vegetative cover, marshes, pits, shelters and fish ladders to provide protected natural spawning, breeding, nesting, and feeding for fish and wildlife.

(8) *Soil and water management for agriculture-related pollutant control.* Measures to reduce agriculture-related pollutants that adversely affect the community and the general public. Measures may include, but are not limited to, holding ponds, debris basins, diversions, terraces, and community distribution systems.

(9) Acquiring fee simple title to lands or perpetual easements, or rights-of-way for sites for works of improvement or project measures and related costs for removal, relocation, or replacement of existing improvements including relocation payments for displaced persons, business enterprises and facilities, and other related purposes. Funds for land acquisition will be limited to costs necessary for WS works of improvement or RCD measures. Final construction plans will indicate minimum essential lands and rights-of-way to be acquired. In some cases, sponsoring local organizations may need to

acquire lands in excess of actual needs when it is expedient for planned development. If the Rural Development State Director determines that the acquisition of excess land is necessary or expedient for the orderly development of a WS works of improvement, or RCD measure, he may authorize the action subject to the following conditions:

(i) The applicant must agree to sell excess land as soon as practicable and apply the proceeds, together with any income from excess land, on the debt to RUS.

(ii) The applicant must furnish legal evidence of authority to acquire additional land and dispose of it as agreed.

(iii) Evidence must be provided to justify acquisition of additional land.

(iv) Easements for land or water resource protection structures must be perpetual and must not include clauses that terminate the easement with the dissolution or abandonment of the applicant organization. Loan funds will not be used for an easement that deviates in any way from that provided in the standard NRCS form unless modifications of it are approved by both NRCS and RUS.

(10) Acquisition of water supply or water right by purchase or by appropriation under local, State, and Federal laws. The loan may include funds for the purchase of land on which the water supply or water right is presently being used when:

(i) The water supply or water right cannot be purchased without the land; and

(ii) The value of the land is not the major portion of the cost; and

(iii) Any excess land thus acquired will be sold as soon as possible and the proceeds applied on the loan.

(11) Purchase of equipment and machinery necessary for development and operation of planned WS works of improvement or RCD measures or projects including:

(i) *Special-purpose equipment.* Purchase or rent special-purpose equipment to install or maintain any community facility in categories in paragraph (a)(11) of this section or to establish on farms soil and water conservation measures such as terraces, ponds, land leveling for irrigation or drainage, subsoiling, seeding, tree planting, and

removal of brush, scattered trees, and stumps, provided:

(A) Such equipment is not otherwise available when needed.

(B) There is sufficient need and local demand to justify ownership or rental.

(C) Rates to be charged include, among other things, an allowance for depreciation, obsolescence, and replacement based upon the recommendations of the equipment manufacturer or the experience of contractors engaged in providing services for similar types of work.

(ii) *Forestry equipment and services.* Purchase or rent basic special-purpose equipment, facilities, certain land or land rights, and supplies needed for furnishing services for the establishment, improvement, protection, and harvesting of timber (not processing) suitable for lumber, pulp, poles or posts; providing that the forest program and forest practices benefiting from such services are in accordance with approved conservation practices for the development, use, and control of water resources on farms and in forests. Special-purpose equipment may include such items as tractors, bull dozers, plows, planters, trucks, loaders, fire-fighting equipment, and sprayers. Facilities may include such items as ponds and reservoirs, pipelines, buildings for storage of equipment and supplies, nurseries, access roads, fire lanes, and lookout towers. Supplies may include such things as seed, seedlings, fertilizers, fencing, and pesticides. Land or land-rights acquisition will be limited to that necessary for sites for facilities listed above which are directly related to the forestry program. Loans for these purposes may be made only when the equipment, supplies, and facilities to be provided:

(A) Are not readily available when needed.

(B) Will be justified by local need and demand.

(C) Will be available to users at rates sufficient to cover loan amortization, obsolescence, replacement, operation, and cost of supplies.

(D) Will more efficiently serve the group through cooperative effort.

(12) Refinancing debt obligations of the sponsoring local organization that were incurred before application for a

## § 1781.6

## 7 CFR Ch. XVII (1–11 Edition)

WS or RCD loan when that is not the primary purpose of the loan and:

(i) The debt being refinanced was for works of improvement or measures for which loan funds could be used; and

(ii) The debt is a valid obligation of the sponsor; and

(iii) Creditors will not modify payment terms on existing debts, and the organization cannot pay existing debts and a loan from RUS over the same period of time; and

(iv) Long-term debts will not be refinanced unless necessary to provide a sound basis for the loan or WS advance and concurrence is obtained from the National Office.

(13) If repayment is based on revenues, loan funds (not WS advances) can be used for payment of interest installments until the facility is generating enough revenue to make accrued interest payments. Loan funds for interest payments will not exceed the estimated amount that will accrue to the end of the third full calendar year after loan closing without prior approval from the National Office.

(14) Relocation payment to displaced persons, businesses, and farm operations and for relocation assistance advisory services in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646, 84 Stat. 1894), the Regulations issued by the Secretary of Agriculture under the Act (7 CFR part 21), and the Memorandum of Understanding Between NRCS and RUS.

(15) Services of engineers, architects, attorneys, auditors, construction foremen, managers, clerks, and others for organizing, planning, surveying, supervising, analyzing, developing, operating, managing, and accounting for activities related to loan processing and closing and development for which the loan is made.

(16) Buildings, fences, roads, utilities, facilities, and relocation:

(i) To construct buildings of modest design essential for the operation and maintenance of the works of improvement or measure.

(ii) To provide support facilities and utilities such as gas, electricity, water, sewer, and waste disposal.

(iii) To build or relocate roads, bridges, utilities, fences, and other improvements when necessary to acquire rights-of-ways or to construct or operate the facility.

(17) Services and fees. To pay costs for services for any purposes listed under this section such as:

(i) Fees or other legal expenses for establishing a water right through appropriation, agreement, permit, or court decree.

(ii) Purchase of water stock or membership in an incorporated water users' association to acquire a water supply.

(iii) Costs of labor, technical or professional services, and fees to be incurred in obtaining the loan and in planning and completing the facilities or services to be financed with loan funds.

(iv) Services such as those listed in paragraph (a)(16) of this section.

(b) *RCD loans*. Purposes for which RCD loans may be made in addition to those included in paragraph (a) of this section are:

(1) *Solid waste management*. Lands, equipment and facilities to collect, transport, and dispose of solid waste in sanitary landfills for which NRCS is providing technical assistance.

(2) *Shifts-in-land use*. Lands for uses such as grazing, forestry, wildlife, natural areas and parks, greenbelts, and other open spaces.

(3) *Purchase existing facilities*. Purchase existing facilities for shift-in-land use, soil and water development, conservation, control and use when it is determined that purchase is necessary to provide efficient service through a facility owned and operated by a public agency (or a nonprofit corporation in a rural area), or the owner is either unwilling or unable to make improvements, enlargement, or extensions needed to provide significant additional or improved service for present users or for a new group of users at reasonable rates.

(c) *NRCS watershed advances*. NRCS watershed advances are loans that may be made from NRCS construction funds for the following purposes included in a watershed work plan agreement:

(1) To pay construction costs including cost of engineering and related

services for increasing reservoir capacity (including intake and outlet structures) for a future water supply for municipal, domestic, industrial, or agricultural uses.

(2) To preserve sites for authorized watershed works of improvement by acquiring land, easements, and rights-of-ways or other property rights.

**§ 1781.7 Loan and advance limitations and obligations incurred before loan closing.**

(a) *WS and RCD loan limitations.* (1) Loans will not be used for:

(i) Land treatment measures on individual farms except as provided in § 1781.6(a)(5)(iv).

(ii) Buildings and facilities to be used for lodging, dining or entertainment purposes.

(iii) Building industrial parks or constructing facilities in them, or establishing private industrial or commercial enterprises, or purchasing land to be used primarily for industrial purposes.

(iv) Paying costs allocated to structural measures for flood prevention.

(v) Facilities for the production and harvesting of fish and wildlife such as hatcheries, rearing ponds, and related facilities other than those under natural conditions.

(vi) Facilities primary for treatment and distribution of water or for sewerage, collection and treatment for domestic or industrial use or for municipal or community systems.

(vii) Electric generating, transmission, and distribution facilities, except when provided as part of the minimum basic facilities for recreation and fish and wildlife developments authorized in § 1781.6(a)(7).

(viii) Storm and sanitary sewers and solid waste disposal facilities other than authorized in § 1781.6(b)(1).

(ix) Payment for a tract of land, easements, or rights-of-ways on which NRCS will share the cost if the amount to be paid with loan funds exceeds the difference between the NRCS share and the value on which the NRCS share is based.

(x) Purchasing tracts of land primarily for later resale to private developers or individuals for agricultural or nonagricultural use.

(xi) Buildings for residential, commercial, or industrial, use.

(xiii) Developments on private property primarily for the benefit of the individual property owner.

(xiv) Payment of that part of the cost of facilities, improvements, and practices that could be earned by participation in agricultural conservation programs unless such cost cannot be covered by purchase orders or assignments to material suppliers or contractors. If a loan is made for such purposes for which practice or cost share payments exceed \$500, RUS will obtain an assignment on such payments to be paid on the loan.

(xv) Primarily for water and sewage treatment plants and distribution systems.

(xvi) Drainage facilities primarily for the benefit of other than rural areas.

(xvii) Any single RCD measure that requires a loan of more than \$500,000.

(xviii) The total amount of principal outstanding for all WS loans made for one or more watershed works of improvement in a single watershed project, whether made to one or more sponsoring organizations, will not exceed \$10,000,000.

(b) *Watershed advance limitations.* (1) A WS advance for future water supply will not be used for acquiring property rights including lands, easements, and rights-of-way; water rights; administration of contracts; storage capacity for immediate municipal use; pipelines from the reservoir to place of use; or for other uses such as irrigation, fish and wildlife, and recreation.

(2) A WS advance for increasing reservoir capacity for future water supply will not exceed 30 percent of the total installation cost of one structure.

(3) A WS advance for site preservation will not exceed that determined necessary by NRCS except to purchase land in excess of actual needs in accordance with the provisions of § 1781.6(a)(7).

(4) Before a project agreement is entered into, there must be satisfactory evidence that the borrower will develop the site to be acquired or will use the future water supply and that revenue will be sufficient to meet all scheduled installments.



## § 1781.8

## 7 CFR Ch. XVII (1–1–11 Edition)

(c) *Obligations incurred before loan closing.* (1) WS loans, WS advances, and RCD loans may be used for payment of obligations incurred before loan closing when the Rural Development State Director determines that:

- (i) The obligations incurred are necessary for planned developments; and
- (ii) The obligations are incurred for authorized loan purposes; and
- (iii) Contracts and construction plans meet RUS and NRCS standards; and
- (iv) The applicant has legal authority to incur the obligations at the time proposed; and
- (v) The Rural Development State Director authorizes such action in a letter to the applicant.

(2) The Rural Development State Director's letter will specifically state that the permission is granted on the condition that RUS is not committed to make a loan and assumes no responsibility for any obligation incurred by the applicant because of the permission granted and that the loan will be closed subject to compliance with agency regulations including closing instructions of the Regional Attorney Office of the General Counsel.

### § 1781.8 Rates and terms—WS loans and WS advances and RCD loans.

(a) *Interest rates.* The interest rate for WS loans, WS advances and RCD loans will be at a rate not to exceed the current market yield for outstanding municipal obligations with remaining periods to maturity comparable to the average maturity for the loan, adjusted to the nearest 1/8 of 1 percent.

(1) For loans, unless otherwise required by State law, interest will accrue from date of check delivery where Form RD 440-22, "Promissory Note (Association Organization)," is used. Where bonds are used interest will accrue from the applicable dates recorded on the bonds. Where multiple loan disbursements are used interest will accrue from date of check.

(2) Interest on an advance for future water supply will begin as required by State law, when water is first used from the future water storage capacity installed with advance, or ten years from the scheduled date of the completion of the facility, whichever date is the earlier.

(3) Interest on an advance for preservation of sites will begin on the date the advance is closed.

(b) *Length of repayment period.* The repayment period on loans may not exceed the shortest of the following periods:

(1) The statutory limitation on the sponsoring local organization's borrowing authority.

(2) Fifty (50) years for WS loans and WS advances and 30 years for RCD loans from the date when the principal benefits from the WS works of improvement or RCD measure being financed first become available.

(3) The useful life of the WS works of improvement or RCD measure being financed with loan or advance funds.

(c) *Deferred or partial payments.* Deferred or partial payments may be authorized in the following circumstances:

(1) Payments need to be delayed until the receipt of income from taxes or other revenues is enough to meet a regular installment but not exceed:

(i) The completion date of the facility; or

(ii) The date when benefits from the facility begins; but

(iii) In no case for more than 5 years for other than future water supply.

(2) Payments will depend on the increased returns expected from planned improvements, or from the installation on individual farms of land development or other soil and water improvements essential for obtaining benefits from the improvement to be installed with loan funds.

(3) They will not be used to permit the accelerated payment of other debts, to make capital improvements, or to create operating reserves.

(4) Where prohibited by State statutes; interest payments will not be deferred even though payments on principal may be deferred.

(5) Loans or advances for future water supply will be repaid within the life of the reservoir structure but in no event later than 50 years for WS and 30 years for RCD after the reservoir structure is built. Payments on the principal amount may be deferred one year after the water is first used from the

storage capacity installed with the advance or for 10 years from the scheduled completion date of the structures, whichever occurs first.

(i) Interest will begin for a future water supply as required by State law, or when water is first used from the future storage capacity or 10 years from the scheduled date of completion of the facility, whichever occurs first.

(ii) If State law requires that interest be charged and repaid before water is first used or earlier than 10 years from completion date of the structure, interest payments will be scheduled to comply with State law even though payments of principal may be deferred.

(iii) The borrower should be encouraged to begin repayments as soon as practicable after the reservoir is built even though this liberal deferment policy exists.

(iv) WS advances for preservation of sites must be fully repaid before beginning construction of the works of improvement for which such sites were acquired.

(A) Unless a WS advance is to be repaid with a WS loan, installments will be scheduled at the earliest possible date following the date of closing the advance. The date and amount of each such installment will be fixed to coincide with the receipt of income from taxes or other revenues.

(B) Payments for both principal and interest on a WS advance for preservation of sites may be scheduled for payment in one installment to be paid on the date of the closing of a WS loan which includes funds for the repayment of the WS advance.

(C) Interest on a WS advance for preservation of sites will begin on the date the WS advance is closed.

(d) *Payment amortization and application.* (1) A borrower may make prepayments on WS loans, WS advances or RCD loans in any amount at any time.

(2) Payments will be applied first to interest accrued to the date of the receipt of payment, and second to the principal balance. If the regular payments plus any prepayments exceed the cumulative amount due, the excess payments will be applied on the next installment first to interest, then principal. Loan refunds and proceeds from the sale of security property, however,

will be applied on the final unpaid installment.

(3) Payments will be scheduled annually beginning one year following the date of loan closing or one year following the end of any approved deferment period, unless another annual due date is required by State statute or upon prior written authorization from the National Office. In those cases where loans are being made under statutes requiring a repayment date other than this, the Rural Development State Director will send a copy of the Regional Attorney's opinion that such is required, to the Finance Office.

(4) When a single obligation instrument is used, amortized installments will be required. When this cannot be done because of state law, serial bonds or a single bond having installments of principal plus interest, stated separately, will be used. In cases where the payment of interest has been deferred, all collections will be applied to interest until such interest has been paid. Also, when a full installment is not paid when due, the payment made will be applied first to accrued interest.

(5) In cases where the indebtedness will be represented by serial bonds or a single bond having installments of principal plus interest, stated separately, annual payments of principal and interest will be scheduled to permit them to be paid in amounts approximately equal to the amounts that would be required for annual amortized installments.

(6) If the borrower will be retiring other debts represented by bonds or notes, the payment on such bonds may be considered in developing the payment schedule for the RUS loan. In some cases, it may be desirable to reduce the amount of payments to RUS in the early years of the loan in order to preclude the necessity for refinancing the outstanding debt. When such payment schedules are proposed, National Office authorization will be obtained prior to loan approval.

(7) *Payment date.* Insofar as loan payments are consistent with income availability, applicable State statutes, and commercial customs in the preparation of bonds or other evidence of indebtedness, they should be scheduled on a monthly basis either in the bond

## § 1781.9

## 7 CFR Ch. XVII (1–1–11 Edition)

or other evidence of indebtedness or through the use of a supplemental agreement. Such requirements will be accomplished not later than the time of loan closing. When monthly payments are required, such payments will be scheduled beginning one full month following the date of loan closing or the end of any approved deferment period. Subsequent monthly payments will be scheduled each full month thereafter. In those cases where evidence of indebtedness calls for annual or semiannual payments, they will be scheduled beginning six or twelve full months, respectively following the date of loan closing or the end of any approved deferment period. Subsequent payments will be scheduled each sixth or twelfth full month respectively, thereafter. When the evidence of indebtedness is dated the 29th, 30th, or 31st day of a month, the payment date will be scheduled the 28th day of the month.

### **§ 1781.9 Security, feasibility, evidence of debt, title, insurance and other requirements.**

(a) *Security.* WS loans, WS advances, and RCD loans will be secured in accordance with applicable provisions of § 1780.14 of this chapter.

(b) *Feasibility.* All projects financed under the provisions of this part must be based on taxes, assessments, revenues, fees, or other satisfactory sources in an amount that will provide for facility operation and maintenance, a reasonable reserve, and payment of the debt. The Rural Development State Director may obtain needed assistance in determining economic feasibility from officials of NRCS and other appropriate USDA agencies. See § 1780.7(f) of this chapter for applicable economic feasibility requirements and feasibility reports.

(c) *Notes, bonds, and bond transcript documents.* See subpart D of Part 1780 of this chapter for applicable requirements and provisions.

(d) *Insurance.* See § 1780.39(g) of this chapter for requirements.

(e) *National flood insurance.* The requirements of the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) as amended by the Flood Disaster Protection Act of 1973 (42 U.S.C. 4003 et

seq.) will be complied with in accordance with applicable provisions of RD Instruction 1901-L. Also see § 1780.39(g) of this chapter.

(f) *Borrower contracts and bonds.* See subpart C of part 1780 of this chapter for applicable provisions.

(g) *Title requirements.* (1) Title evidence for land, easements, and rights-of-way to be acquired with proceeds of loans or advances will be furnished by the sponsoring local organization in accordance with NRCS policies and procedures.

(2) RUS will specify and approve the form and content of instruments for conveying title to or interest in real estate on which a lien will be taken to secure a WS loan, WS advance, or RCD loan. These should be consistent with the applicable provisions of § 1780.14 of this chapter. The Rural Development State Director will make his decision after consultation with the Regional Attorney and the State Conservationist. He will notify NRCS in writing of his decision. Thereafter, title clearance will be completed under NRCS regulations except that a marketable title must be obtained on any tract of land, a part of which will be sold as excess land in accordance with § 1781.6(a)(9). In addition to the title evidence required by NRCS, applicants will furnish an opinion of legal counsel on all land and interest in land acquired with loan or advance funds.

(h) *Purchasing lands, rights and facilities.* The amounts paid for lands, rights, and facilities with loan funds will be not more than that determined to be reasonable and fair by the loan approval official based upon an appraisal of the current market value made by an Rural Development employee or an independent appraiser.

(i) *Water rights.* Applicants will be required to comply with applicable State and local laws and regulations governing appropriating, diverting, storing and using water, changing the place and manner of use of water, and in disposing of water. All of the rights of any landowner, appropriator, or user of water from any source will be fully honored in all respects as they may be affected by facilities installed with WS loans and advances and RCD loans. If,

## Rural Utilities Service, USDA

## § 1781.11

under the provisions of State law, notice of the proposed diversion or storage of water by the applicant may be filed, the applicant will be required to file such a notice. An applicant must furnish evidence to provide reasonable assurance that its water rights will be or have been properly established, will not interfere with prior vested rights, will likely not be contested or enjoined by other water users or riparian owners, and will be within the provisions of any applicable interstate compact.

### § 1781.10 [Reserved]

### § 1781.11 Other considerations.

(a) *Technical assistance.* When pipelines from reservoirs to treatment plants are included in watershed work plans, NRCS will not furnish engineering services for their design or installation. When such pipelines are to be financed by WS or RCD loans, RUS will supervise the activities of the private engineers retained for the purpose. Such RUS supervision will include, among other things, approval of private engineer's contracts, approval of plans and specifications, authorization of contract awards, spot checks of engineering inspection, and final inspection and acceptance.

(b) *Professional services.* Applicants will be responsible for providing the services necessary to plan projects including design of facilities, preparation of cost and income estimates, development of proposals for organization and financing, and overall operation and maintenance of the facility. Necessary professional services may include such as that of an engineer, architect, attorney, bond counsel, accountant, auditor, and financial advisor or fiscal agent. Form RD 442-19, "Agreement for Engineering Services," may be used when appropriate. RUS Bulletin 1780-7, "Legal Service Agreement" may be used to prepare the agreement for legal services.

(c) *Other services.* Contracts for other services such as management, operation, and maintenance will be developed by the applicant and presented to the RUS official developing the docket for review and approval.

(d) *Fees for services.* Fees provided for in contracts, agreements or services

will not be more than those ordinarily charged by the profession for similar work when RUS financing is not involved.

(e) *State pollution control or Environmental Protection Agency standards.* Facilities will be designed, installed and operated to prevent pollution of water in excess of established standards. Effluent disposal will conform with appropriate State and Federal Water Pollution Control Standards.

(f) *Water pollution.* When repayment of a WS loan, WS advance, or RCD loan will be dependent upon income from the use or sale of water, RUS approval will be contingent upon a determination that the proposed use of stored water for recreation or municipal supply might not be permitted by a State health department because the water is being polluted from an upstream or other source.

(g) *Environmental requirements.* Actions will be taken to comply with the National Environmental Policy Act (42 U.S.C. 4321 et seq.) in accordance with subpart G of part 1940 of this title. When environmental assessments and environmental impact statements have been prepared on WS plans or RCD area plans by NRCS, a separate environmental impact statement or assessment on WS works of improvement or RCD measures for which a WS loan, WS advance, or RCD loan is requested will not be necessary unless the NRCS environmental review fails to meet the requirements of subpart G of part 1940 of this title. The Rural Development State Director should document the action taken by NRCS in compliance with the requirements of the National Environmental Policy Act and formally adopt the impact statement or assessment if satisfactory. If a determination is made that a further analysis of the environmental impact is needed, the Rural Development State Director will make necessary arrangements with the State NRCS conservationist for such action to be taken before a loan is made.

(h) *National Historic Preservation Act.* All projects will comply with the provisions of the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) in accordance with RD Instruction 1901-F.

(i) *Civil Rights Act of 1964.* Recipients of WS loans, WS advances, or RCD loans are subject to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), which prohibits discrimination because of race, color, or national origin. Borrowers must agree not to discriminate in their operations by signing Form RD 400-4, "Nondiscrimination Agreement," before loan closing. This requirement should be discussed with the applicant as early in the negotiations as possible. Necessary actions will be taken in accordance with RD Instruction 1901-E.

(j) *Appraisals.* When required by the Rural Development State Director, appraisals will be made by an Rural Development official designated or an independent appraiser. Form RD 442-10, "Appraisal Report—Water and Waste Disposal Systems," with appropriate supplements, may be modified as needed for use with the type of facilities being appraised.

(k) *Architectural Barriers Act of 1968.* All facilities financed with RUS loans and grants which are accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with this act (42 U.S.C. 4151 et seq.).

#### § 1781.12 Preapplication and application processing.

(a) *WS and RCD loans—(1) Preapplications.* (i) The processing office or other person designated by the Rural Development State Director may assist the applicant in completing SF 424.1, "Application for Federal Assistance (For Non-construction)," and will forward one of SF 424.1 to the Rural Development State Director.

(ii) The Rural Development State Director will review SF 424.1 along with other necessary information and will coordinate selection of preapplications to be processed with NRCS. He will consult with NRCS State Conservationist concerning the status of the WS plan or RCD measure plan, the estimated time schedule for construction and cost of the proposed works to be installed with the loan, cost sharing funds to be made available to the applicant, and other pertinent information.

(iii) Form AD-622, "Notice of Preapplication Review Action," will be

prepared and signed by the Rural Development State Director within forty-five (45) days from receipt of the preapplication in the processing office stating the results of the review action. An original and one copy of Form AD-622 will be sent to the processing office who will deliver the original to the applicant.

(2) *Applications.* (i) The application includes applicable forms and information indicated in RUS Instruction 1780. When the Rural Development State Director determines that an application will be further processed and Form AD-622 is delivered, he will designate a community program specialist (field), or a member of the community program staff to assist the processing office and the applicant with assembling and processing the application.

(ii) The processing office should arrange needed conferences with the applicant and its legal and engineering consultants, and when necessary, arrange for review of other Rural Development officials, and provide bulletins, forms, instructions and other assistance with assembling and processing the application. A processing checklist and time schedule will be established by using Form RD 1942-40, "Processing Check List (Public Bodies)," or Form RD 1942-39, "Processing Check List (Other than Public Bodies)." The processing office will send a letter and a copy of the processing checklist to the applicant to confirm decisions reached at the conference. The original and a copy of the processing checklist will be kept in the processing office and will be posted current as application processing actions are taken. The copy will be circulated from the processing office to the State Office for use in updating copies of the forms retained, after which it will be returned from the State Office to the processing office.

(3) *Dockets.* WS loan, WS advance, and RCD loan dockets will be developed and assembled in accordance with applicable RUS Instruction 1780.

(b) *Watershed advances.* Applications for WS advances will be developed and processed with NRCS assistance as necessary.

(1) The Rural Development State Director will arrange with the NRCS State Conservationist to be advised

## Rural Utilities Service, USDA

## § 1781.14

when a local sponsoring organization applies to NRCS for a WS advance.

(2) The Rural Development State Director will request the NRCS State Conservationist to provide information justifying the WS advance along with a written recommendation that it be made. This will include:

(i) Economic feasibility of the proposed WS advance.

(ii) Evidence of the legal authority of the sponsoring local organization to incur the obligation and make required payments.

(iii) Any limitations on the issuance of additional bonds or notes which may be imposed by the provisions of bond ordinances or on resolutions which authorize the issuance of any outstanding obligation of the sponsoring local organization.

(iv) The amount of WS advance funds to be provided, purpose for which funds will be used, and date funds will be needed.

(3) When the above information has been made available to the Rural Development State Director, he will send written recommendations concerning further action on the WS advance request to the NRCS State Conservationist including actions to be taken in the preparation of the WS advance docket.

(c) *Combination WS loans and WS advances.* If an applicant requests both a WS loan and WS advance, the application for the WS loan should indicate the amount of the WS advance needed and whether a request for it has been made to NRCS. The Rural Development State Director and the NRCS State Conservationist will coordinate applicable processing actions of such applications. When the Rural Development State Director determines that favorable consideration will be given to an application for a loan or advance, he will provide instructions to the processing office for completing and processing the appropriate docket. Any questions concerning eligibility or other legal matters should be cleared with the Regional Attorney.

(d) *Review of decision.* When it is determined that the preapplication or application cannot be given favorable consideration, the Rural Development State Director will return it to the

processing office along with written reasons. When the processing office receives this information, it will notify the applicant in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that the RUS Administrator may be requested to review the decision. This action will be taken in accordance with § 1780.37 of this chapter.

(1) Upon receipt of the State Office copy of a review request from the applicant, the Rural Development State Director will furnish a report on the matter to the Administrator.

(2) The Administrator will notify the applicant and the Rural Development State Director in writing of his decision and the reasons therefore.

### § 1781.13 [Reserved]

### § 1781.14 Planning, options, and appraisals.

(a) WS and RCD area plans are developed by sponsoring local agencies and organizations with technical assistance from NRCS and other Federal and State agencies. These plans include WS works of improvement and RCD measures to be developed or constructed for which NRCS construction funds may be made available on a cost share basis along with funds provided by the sponsoring local organization, a portion or all of which may be obtained by a WS loan and/or WS advance or a RCD loan.

(b) Current information on the availability of cost share funds and purposes for which they may be used is provided by NRCS. The amount of NRCS cost share funds and the amount of funds to be provided by the sponsoring local organizations will be indicated in each plan. The estimated amount of WS loan, WS advance or RCD loan anticipated by the sponsoring local organization should also be included.

(c) Plans for the development or construction of individual WS works of improvement and RCD measures will normally be developed with NRCS technical assistance. In every case they will be approved by both the NRCS State conservationist and the Rural Development State Director or their designated agent when a WS loan, WS advance or RCD loan is made.

## § 1781.15

(d) Options and appraisals related to the purchase of real estate for which a WS loan, WS advance, or RCD loan is made must be developed in accordance with NRCS and RUS requirements and approved by RUS. The determination of present market value will be made in accordance with §1780.44(g) of this chapter.

### § 1781.15 Planning and performing development.

Planning and performing development will be handled in accordance with subpart C of part 1780 of this chapter and guidance from NRCS.

### § 1781.16 [Reserved]

### § 1781.17 Docket preparation and processing.

(a) *Loan dockets.* Dockets for WS loans, WS advances and RCD loans will be prepared in accordance with the applicable provisions of part 1780 of this chapter.

(1) *Time for preparation of docket.* Docket preparation may begin as soon as a preliminary draft of the watershed plan or RCD area plan, together with an estimate of costs and benefits, have been prepared with the assistance of NRCS and approved by the sponsoring local organization applicant. However, the applicant must understand that approval of the WS loan, WS advance, or RCD loan will not be determined until the work plan has been authorized for assistance by NRCS. To the extent practicable, docket preparation may be completed by that time to facilitate the availability of funds when needed.

(2) *Instructions for preparation of docket.* When the Rural Development State Director has determined that plans and other requirements are completed to the extent that preparation of the loan docket may begin, he will send the processing office a memorandum giving complete instructions for docket preparation, with a list of documents to be included in the docket.

(3) *Objectives of the docket.* The docket should include information for use in determining that:

(i) The sponsoring local organization:

(A) Has legal authority to construct and operate the proposed facility, borrow money, give security, incur debt,

and generate revenue needed for operation, maintenance, reserves, debt payment, and other cash requirements.

(B) Is a sponsor or cosponsor of the WS plan or RCD work plan and is otherwise eligible for assistance.

(ii) Funds will be used for authorized purposes.

(iii) The source of income to be pledged for debt payment and the security proposed is adequate.

(iv) Actions required for loan closing are administratively satisfactory, legally sufficient and properly documented in accordance with Agency regulations.

(4) *Assembly of the docket.* The docket will be assembled in accordance with paragraph (a)(2) of this section and will include the following:

(i) A copy of the WS works of improvement agreement or RCD measure agreement.

(ii) A copy of the Operation and Maintenance Agreement between NRCS and the WS or RCD sponsoring local organization for the WS works of improvement or the RCD measure.

(iii) A statement from the NRCS State Conservationist concurring in the feasibility of the WS work of improvement or RCD measure and that NRCS is providing financial and/or technical assistance in accordance with applicable WS or RCD authorities.

(5) *Narrative by processing office.* This should be included in or attached to the Project Summary. It should relate project costs to benefits of the WS or RCD loan or WS advance. Minimum and average individual charges, tax levies or assessments should be given where applicable. Where taxes or assessments on land will be levied, acres should be indicated and average cost per acre should be given. Analyses of income from recreational facilities should be based on the best information available from local, State, and Federal agencies concerned with such recreation facilities. Determination of water rates, schedules, and estimated consumption of water should be made by the same methods as for loans for domestic water and irrigation.

(6) *Estimates of right-of-way Costs.* The docket should include, as part of the Project Summary, current estimated costs of easements, rights-of-way, and

other land rights which must be acquired. The amount estimated for such purposes in the WS or RCD plan should reflect current conditions.

(b) *Loan processing by State Office*—(1) *Review of the docket.* The processing office will check the docket for accuracy and completeness and forward it to the State Office with their recommendations. The Rural Development State Director will review the docket to determine that:

- (i) All documents are accurate and complete.
- (ii) The proposed loan complies with WS and RCD program policies and procedures of both RUS and NRCS.
- (iii) Security is adequate and the repayment plan is sound.
- (iv) Funds requested are for authorized purposes.
- (v) Actions are in compliance with requirements of applicable Federal and State laws.

(2) *Letter of conditions.* When the Rural Development State Director determines that the docket is complete and the proposed activity is feasible, he will prepare a proposed letter of conditions under which the application may be further processed. The letter will be delivered to and discussed with the applicant. Upon acceptance of the conditions the applicant will indicate intentions to meet the conditions by a letter of interest and the application will be further processed.

(3) *Legal review.* The complete docket and proposed letter of conditions will be forwarded to the Regional Attorney, OGC for review and preparation of closing instructions. If it is not possible to issue closing instructions at that time, the Regional Attorney, will issue a preliminary legal opinion commenting upon the applicants legal existence, authority to incur debt and give security for the WS loan, WS advance, or RCD loan requested and actions to be taken before closing instructions may be issued.

(4) *Authorization for approval.* When the Rural Development State Director receives closing instructions or a preliminary legal opinion for a WS loan, WS advance, or RCD loan that is not within his approval authority he will send this information along with the docket, the proposed letter of condi-

tions, and a memorandum recommending approval to the National Office. A copy of his memorandum will be sent to the processing office. If the proposed action is within the Rural Development State Director's approval authority he need not submit the material listed in this paragraph (b)(4) to the National Office unless he wants review and comments before approval.

(c) *WS advance processing.* (1) When the Rural Development State Director has concurred with the NRCS State Conservationist in the inclusion of a WS advance in a watershed plan, preparation of the advance docket can be initiated and will be processed in the same manner as for a WS loan. Where both a WS loan and WS advance are planned only one docket will be prepared to include both the WS loan and WS advance.

(2) If the advance appears to be sound and proper, the Rural Development State Director will send a proposed memorandum of concurrence to the NRCS State Conservationist. The memorandum will state that RUS concurs in the execution of a work of improvement agreement for which NRCS will obligate advance funds and that RUS will accept the proposed obligations of the applicant to repay the advance subject to conditions specified in or attached to the memorandum. These conditions will include all appropriate requirements in accordance with paragraph (b)(2) of this section and will specify compliance with closing instructions issued by the Regional Attorney. It will also indicate that preparation of the WS advance docket will be in accordance with paragraph (a) of this section.

(3) The Rural Development State Director and the NRCS State Conservationist will sign the memorandum of concurrence to NRCS when:

- (i) It has been determined that funds for the advance will be obligated by NRCS; and
- (ii) The WS advance docket, has been approved; and
- (iii) Closing instructions have been issued by the Regional Attorney; and
- (iv) The Rural Development State Director and NRCS State Conservationist have determined that the applicant can comply with all requirements of the



## **§ 1781.18**

letter of conditions and closing instructions.

### **§ 1781.18 Feasibility.**

(a) Before WS loan, WS advance, or RCD loan is approved, a determination of feasibility will be made by the Rural Development State Director based upon a review of plans developed in cooperation with NRCS personnel. The feasibility determination must have the concurrence of the NRCS State Conservationist before a WS loan, WS advance, or RCD loan is approved.

(b) A written assessment of the project's feasibility will be made by the processing office, Architect/Engineer, and Program Chief in their recommendations or comments on the Project Summary. These should reflect concurrence of the respective NRCS personnel in counterpart positions with whom they cooperate in administering these programs.

### **§ 1781.19 Approval, closing, and cancellation.**

(a) Approval and closing actions will be taken in accordance with the applicable provisions of part 1780 of this chapter and the following requirements have been met:

(1) The WS or RCD plan has been approved for operations by NRCS and the applicant is an official sponsoring or cosponsoring local organization for the plan as evidenced by being included in the list of sponsoring or co-sponsoring local organizations in the plan.

(2) Closing instructions or a preliminary legal opinion has been prepared by the Regional Attorney.

(3) The governing body of the applicant's sponsoring local organization has formally passed and approved the loan resolution.

(4) The Rural Development State Director and NRCS State Conservationist have determined that all planned actions can be carried out as proposed in the project plan and the docket.

(5) The NRCS State Conservationist and Rural Development State Director have mutually agreed on the priority to be given the WS loan or WS advance, or RCD loan. In making this determination, consideration will be given to the relative priority of the WS works of improvement or RCD meas-

## **7 CFR Ch. XVII (1-1-11 Edition)**

ures to all other such work in the State and the anticipated availability of Federal and local funds to assure continuity of action and work until the project is completed. When funds are to be provided by NRCS for a WS or RCD loan or a WS advance such funds must be obligated by NRCS before closing.

(6) Public bodies will be required to use bond counsel in accordance with subpart D of part 1780 of this chapter.

(b) When favorable action is not taken on a WS loan, WS advance, or RCD loan, the Rural Development State Director will notify the NRCS State Conservationist and the applicant in writing and, if possible, arrange for a meeting of RUS and NRCS representatives with the applicant to explain the action. WS loans, WS advances, or RCD loans may be canceled before closing.

### **§ 1781.20 Disbursement of WS and RCD loan funds and WS advance funds.**

(a) WS and RCD loan funds will be disbursed by the processing office in accordance with the applicable provisions of §1780.45 of this chapter and RUS Bulletin 1781-1, paragraph (5). Funds will be made available to the borrower as needed for payment of development or other costs for which the loan is made. The processing office must determine that the payment is for an authorized purpose and is for benefits accrued to the borrower. This will require evidence from NRCS in accordance with the applicable provisions of RUS Bulletin 1781-1, "Memorandum of Understanding Between RUS and NRCS."

(b) WS advance funds may be disbursed in the same manner as WS loan funds if such funds are transferred to RUS by NRCS for disbursement or they may be disbursed by NRCS. When WS advance funds are disbursed by NRCS, payments from advance of funds will be reported to the Rural Development State Director each month to be reported to the Finance Office and charged to the borrower's account. This action will be taken in accordance with the applicable provisions of RUS Bulletin 1781-1 or RUS Bulletin 1781-2 and agreement between the NRCS

State Conservationist and Rural Development State Director as follows:

(1) When a future water supply is being developed with NRCS, WS advance funds, the NRCS State Conservationist will send the Rural Development State Director a monthly report of funds disbursed. This will include three (3) copies of Form NRCS-AS-49a and 49b, "Contract Payment Estimate and Construction Progress Report," along with a transmittal Memorandum showing the sequential number (first, second, third, etc.) of the payment, the amount and date of payment, the check number by which the payment was made and the cumulative amount of advance funds disbursed to date. When the works of improvement, for which WS advance funds are used is completed the final report will, in addition to the above, show the date that construction was completed and the total amount of WS advance funds used.

(2) WS advances for construction costs will be set out each month on Form NRCS-49a. The Rural Development State Director should make arrangements with the NRCS State Conservationist to be supplied each month with a copy of Form NRCS 49a when advance funds are included together with an official statement from the NRCS State Administrative Officer giving the date of the check and the exact amount of each advance of funds made under the advance provisions of the project agreement or of any engineering services agreement or other supplementary agreement which further implements the proposal for the advance in the project agreement. The original will be sent immediately to the Finance Office and a copy provided for the processing office file.

(3) When WS advance funds are used to acquire property for site preservation the same reporting procedure as for a future water supply will be used except that Form NRCS-AS-49a and 49b if used, should be adopted to indicate fund use. As payments are made on land on which a mortgage or other security instrument is required, such instruments will be executed in accordance with instructions from the Regional Attorney, OGC.

(4) The Rural Development State Director must send the bond or note evidencing WS advance indebtedness of the borrower to the Finance Office along with reports of payments from advance funds disbursed by NRCS. A copy of the bond or note and copy of each report of payment will be sent to the processing office.

(c) *Actions subsequent to closing of loans or advances.* Actions will be taken in accordance with §1780.44 of this chapter.

#### **§ 1781.21 Borrower accounting methods, management, reporting, and audits.**

These activities will be handled in accordance with the provisions of §1780.47 of this chapter.

#### **§ 1781.22 Subsequent loans.**

Subsequent loans will be processed in accordance with this part.

#### **§ 1781.23 Servicing.**

Servicing will be handled in accordance with the provisions of subpart E of part 1951 of this title.

#### **§ 1781.24 State supplements and availability of bulletins, instructions, forms, and memorandums.**

(a) State supplements will be issued as needed in accordance with applicable provisions of part 1780 of this chapter.

(b) Bulletins, instructions, forms and memorandums are available from any USDA/Rural Development office or the Rural Utilities Service, United States Department of Agriculture, Washington, DC. 20250-1500.

#### **§§ 1781.25-1781.100 [Reserved]**

### **PART 1782—SERVICING OF WATER AND WASTE PROGRAMS**

Sec.

- 1782.1 Purpose.
- 1782.2 Objectives.
- 1782.3 Definitions.
- 1782.4 Availability of forms and regulations.
- 1782.5 Nondiscrimination.
- 1782.6 [Reserved]
- 1782.7 Grants.
- 1782.8 Payments.
- 1782.9 Environmental requirements.
- 1782.10 Audit requirements.